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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/566,537

09/11/2006

James Johnson

26090-049

6154

26691

7590

08/10/2010

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EXAMINER

WALKER, NED ANDREW

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

08/10/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/566,537	Applicant(s) JOHNSON, JAMES	
	Examiner NED A. WALKER	Art Unit 3781	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112 first and second paragraph rejection of Claim 5; 35 USC 112 second paragraph rejection of Claims 1-2.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-5.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Anthony Stashick/
 Supervisory Patent Examiner, Art Unit 3781

Continuation of 11.

Applicant's arguments, see amendment after-final filed July 26th, 2010, with respect to the rejection of Claims 1-5 under 35 USC §102(b) as being anticipated by French et al. (US Pat. No. 6,105,802) and under 35 USC §102(b) as being anticipated by Laciacara et al. (US Pat. No. 6,279,779), have been fully considered, but are not persuasive. The Examiner notes that the amendments to the Claims consisted of minor changes made to overcome the 35 USC §112, second paragraph rejections and/or objections and there were no apparent amendments to the claims made in order to overcome the prior art rejections. The previous rejections remain as applied in the Final Rejection dated February 26th, 2010; please see this action for further information regarding the details of the rejection.

In response to applicant's arguments that the finality of the previous office action was improper because the new grounds of rejection were not necessitated by the amendments, the Examiner contends that these references do address the added limitations concerning the pre-cap and full-cap positions and therefore were necessitated by the amendment. With respect to French et al., the pre-cap and full-cap positions are addressed in FIGS. 1-2 and column 3 lines 1-22. With respect to Laciacara et al., the pre-cap and full-cap positions are addressed in FIGS. 4-5 and FIG. 6, respectively. The Examiner points out that the claim language regarding the pre-cap and full-cap positions is sufficiently broad to include a method of use position before, during or after the initial packaging of the cap and/or before, during, or after the opening/closing of the cap by the consumer. The above references were chosen because they adequately show these configurations and disclose the corresponding features and their relationships to one another in the claims. Because of these reasons the application of these references was proper and was necessitated by the prior amendment. Therefore the Finality of the previous office action is maintained.

In response to applicant's arguments that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the cap provides an aseptic seal", "push-on mechanism", "pull-off mechanism", "screw threads at the top of the spout provided for attachment to a connector pipe", and "circular tab protrusions") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

For these reasons, the rejection of Claims 1-5 under 35 USC §102(b) as being anticipated by French et al. (US Pat. No. 6,105,802) and under 35 USC §102(b) as being anticipated by Laciacara et al. (US Pat. No. 6,279,779), is hereby affirmed..